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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,709	04/11/2001	Karla E. Williams	460.2050USU	1658

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT PAPER NUMBER

3761

DATE MAILED: 12/31/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/832,709

Applicant(s)

WILLIAMS ET AL.

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-30 is/are pending in the application.
- 4a) Of the above claim(s) 16, 18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Applicant's election of claims 1, 3-15, 17, and 20-30 in Paper No. 8, filed 8/20/03 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. This application contains claims drawn to an invention nonelected with traverse in Paper No. 8. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.
3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Response to Arguments

4. Applicant's arguments with respect to claims 1, 3-15, 17 and 20-30 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3-15, and 20-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Jacob USPN 4722936.

As to claim 1, Jacob discloses a tampon for absorbing body fluids comprising: one or more malodor counteractant materials selected from the claimed group of materials, wherein the counteractant materials is in a liquid form (Abstract, col. 7, line 60 through col. 8, line 3 – Jacob discloses the ascorbic acid is applied to the tampon in liquid form and allowed to dry).

As to claim 3, Jacob discloses glycerin as part of the counteractant material (col. 8, line 17).

As to claims 4 and 5, Jacob discloses one or more malodor counteractant materials is present in an amount between 100mg and 500mg, which is included in the claimed range (col. 4, lines 32-47).

As to claims 6 and 8, Jacob discloses a tampon for absorbing body fluids comprising: one or more malodor counteractant materials selected from the claimed

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group of materials, wherein the counteractant materials is in a liquid form (Abstract, col. 7, line 60 through col. 8, line 3 – Jacob discloses the ascorbic acid is applied to the tampon in liquid form and allowed to dry). Jacob also discloses glycerin as part of the malodor counteractant materials. It is old and well known that ascorbic acid is Vitamin C and can be used effectively as a malodor counteractant in its natural or synthetic form. Additionally it is old and well known that glycerin is a natural substance.

As to claim 7, Jacob discloses ascorbic acid as a malodor counteractant, which is selected from the group of materials (col. 8, lines 3-23).

As to claims 9 and 10, Jacob discloses one or more malodor counteractant materials is present in an amount between 100mg and 500mg, which is included in the claimed range (col. 4, lines 32-47).

As to claims 11-15, Jacob discloses a tampon for absorbing body fluids comprising: one or more malodor counteractant materials selected from the claimed group of materials, wherein the counteractant materials is in a liquid form (Abstract, col. 7, line 60 through col. 8, line 3 – Jacob discloses the ascorbic acid is applied to the tampon in liquid form and allowed to dry). Jacob also discloses glycerin as part of the malodor counteractant materials. It is old and well known that ascorbic acid is Vitamin C and can be used effectively as a malodor counteractant in its natural or synthetic

form. Additionally, it is old and well known that glycerin is a naturally sourced substance.

As to claim 20, Jacob discloses a tampon for absorbing body fluids comprising: a fibrous material suitable for absorbing body fluid (Abstract – Jacob discloses the solution on a carrier of absorbent mass); and a liquid glycerin. Glycerin in its natural state is liquid. Additionally, Jacob discloses the malodor solution is applied to the tampon in liquid form and allowed to dry (col. 7, line 60 through col. 8, line 24 and col. 9, lines 14-17). It is understood by the examiner that the glycerin does not support microbial growth since the malodor solution counteracts the toxins that produce an undesirable odor (col. 1, line 62 through col. 2, lines 13).

As to claim 21, Jacob discloses ascorbic acid as a malodor counteractant, materials selected from the claimed group of materials, wherein the counteractant materials is in a liquid form (Abstract, col. 7, line 60 through col. 8, line 24).

As to claims 22 and 23, Jacob also discloses glycerin as part of the malodor counteractant materials. It is old and well known that ascorbic acid is Vitamin C and can be used effectively as a malodor counteractant in its natural or synthetic form. Additionally, it is old and well known that glycerin is a naturally sourced substance.

As to claims 24 and 25, Jacob discloses a method of deodorizing a vaginal area comprising apply the tampon of claim 1 to the vaginal area, wherein one or more malodor counteractant materials counteracts malodor in the vaginal area (col. 1, lines 57-61; col. 3, lines 5-7, and lines 54-63; and col. 4, lines 1-7). . It is old and well known that ascorbic acid is Vitamin C and can be used effectively as a malodor counteractant in its natural or synthetic form.

As to claim 26, Jacob discloses a method of deodorizing a vaginal area comprising applying to the vaginal area a fibrous material suitable for absorbing body fluid (Abstract – Jacob discloses the solution on a carrier of absorbent mass); and a liquid glycerin. Glycerin in its natural state is liquid. Additionally, Jacob discloses the malodor solution is applied to the tampon in liquid form and allowed to dry (col. 7, line 60 through col. 8, line 24 and col. 9, lines 14-17). Additionally, Jacob discloses ascorbic acid as a malodor counteractant, materials selected from the claimed group of materials, wherein the counteractant materials is in a liquid form (Abstract, col. 7, line 60 through col. 8, line 24).

As to claim 27, Jacob a method of deodorizing a vaginal area comprising apply to the vaginal area a fibrous absorbent article for absorbing body fluids (Abstract - Jacob discloses the solution on a carrier of absorbent mass); and a liquid glycerin. Glycerin in its natural state is liquid. Additionally, Jacob discloses the malodor solution is applied to

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the tampon in liquid form and allowed to dry (col. 7, line 60 through col. 8, line 24 and col. 9, lines 14-17). It is understood by the examiner that the glycerin does not support microbial growth since the malodor solution counteracts the toxins that produce an undesirable odor (col. 1, line 62 through col. 2, lines 13).

As to claim 28, Jacob discloses a tampon for absorbing body fluids comprising: one or more malodor counteractant materials selected from the claimed group of materials (ascorbic acid is a natural oxidant), wherein the counteractant materials is in a liquid form (Abstract, col. 7, line 60 through col. 8, line 3 – Jacob discloses the ascorbic acid is applied to the tampon in liquid form and allowed to dry).

As to claims 29 and 30, Jacob discloses one or more malodor counteractant materials is present in an amount between 100mg and 500mg, which is included in the claimed range (col. 4, lines 32-47).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacob in view of Tanzer et al. USPN 5037412. Jacob discloses the present invention substantially as claimed except that Jacob discloses ascorbic acid instead of citric acid as the malodor counteractant. Tanzer shows that citric acid is an equivalent structure known in the art (Tanzer col. 5, lines 1-10). Therefore, because the two acids were art-recognized equivalents for the purpose of a deodorant mixture, at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute citric acid for ascorbic acid.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dupuis et al. USPN 6031043 is cited to show ascorbic acid used in its natural or synthetic state as a skin conditioning agent and deodorant.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703)308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Jacqueline F Stephens
Examiner
Art Unit 3761



December 28, 2003


GLENN K. DAWSON
PRIMARY EXAMINER